

198 (E.D. Pa. 2014).

3. The Court finds that the Settlement Agreement is the result of extensive, arm's length negotiations by counsel well-versed in the prosecution of employment class action and civil rights matters, and provides significant monetary and injunctive relief to the class members:

- a. Pursuant to an allocation formula from a Gross Settlement Fund of \$3,600,000, CHRIA Class Members (as defined below) will be eligible to receive a settlement award of up to \$35,000, with a floor of \$5,000, and FCRA Class Members (as defined below) will be eligible to receive a settlement payment of \$250 (*see* Miazad Decl., Ex. A (Settlement Agreement) § 3.4);
- b. CHRIA Class Members will be eligible for priority hiring for the positions to which they previously applied (or a substantially similar position) and were disqualified based on a criminal drug conviction (*see id.* § 3.3(A));
- c. Defendant will rescind the challenged policy pursuant to a binding agreement (*see id.* § 3.3(C));
- d. Defendant will retain a neutral third-party expert to review its criminal history screening policies and practices and make recommendations for prospective changes (*see id.* § 3.3(B)).

II. Conditional Certification of the Proposed Rule 23 Settlement Classes

4. The Court provisionally certifies the following classes under Rule 23(e) of the Federal Rules of Civil Procedures ("Rules") for settlement purposes:

CHRIA Class: Applicants who applied to SEPTA for positions as Bus Operators, Maintenance Custodian Drivers, Railroad Conductor/Engineer Trainees, Mechanics, Railroad Engineers, Surface Train Operators, Rail Vehicle Equipment Welders, Rail Vehicle Machinists, Rail Vehicle Electronic Maintainers, Transportation Managers, Railroad Supervision Managers and/or any other position that requires the operation and/or maintenance of a SEPTA vehicle, between April 27, 2010, and August 26, 2018, and were denied in whole or in part based on drug conviction(s). Excluded from the CHRIA Class are applicants with a violent felony conviction on their consumer report within two years of their application to SEPTA.

FCRA Class: All applicants to SEPTA who were denied employment by SEPTA, from April 27, 2011, through August 26, 2018, because of their criminal history.

5. Plaintiffs meet all of the requirements for class certification under Rules 23(a), (b)(2), and (b)(3).

6. Plaintiffs satisfy Rule 23(a)(1) because there are approximately 1,200 potential FCRA Class Members and more than 300 potential CHRIA Class Members and, thus, joinder is impracticable. *See Jones v. Commerce Bancorp, Inc.*, No. 05 Civ. 5600, 2007 WL 2085357, at *3 (D.N.J. July 16, 2007) (“classes of close to one hundred members are sufficient”) (*citing Eisenberg v. Gannon*, 766 F.2d 770, 785-86 (3d Cir. 1985)).

7. Plaintiffs satisfy Rule 23(a)(2) because Plaintiffs and the Class Members share common issues of fact and law, including whether SEPTA’s criminal history screen violates Pennsylvania’s Criminal History Record Information Act (“CHRIA”), 18 Pa. Cons. Stat. § 9125, whether SEPTA willfully violated the CHRIA, and whether SEPTA failed to provide applicants with a copy of their consumer report under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681, et seq. *See Little v. Wash. Metro. Area Transit Auth.*, 249 F. Supp. 3d 394, 419 (D.D.C. 2017) (finding that class of applicants in lawsuit challenging employer’s criminal history hiring screen satisfied the commonality requirement); *Houser*, 28 F. Supp. 3d at 243-45 (same); *Pickett v. Simos Insourcing Sols., Corp.*, No. 17 Civ. 1013, 2017 WL 3444755, at *1 (N.D. Ill. Aug. 10, 2017) (FCRA class satisfied commonality for settlement purposes).

8. Plaintiffs satisfy Rule 23(a)(3) because, like the Class Members, Plaintiffs allege that they applied to covered positions at SEPTA during the relevant period and were denied employment pursuant to SEPTA’s blanket screening policy, and that SEPTA failed to provide them with a copy of their background check prior to denying them employment. Plaintiffs and the Class Members make the same legal arguments in support of their claims. *See Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 57-58 (3d Cir. 1994) (The central inquiry is whether “the named plaintiff’s individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will

performe be based.”) (internal quotation marks omitted).

9. Plaintiffs satisfy Rule 23(a)(4) because Plaintiffs suffered the same injury as the Class Members and share the Class’s interest in establishing the unlawfulness of SEPTA’s screening policy, including SEPTA’s alleged failure to provide timely copies of their consumer reports, and obtaining monetary and injunctive relief. *See E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) (“class representative must be part of the class and possess the same interest and suffer the same injury”).

10. Plaintiffs’ CHRIA claim for injunctive relief satisfies Rule 23(b)(2) because SEPTA allegedly applied the challenged criminal history screening policy uniformly to all members of the CHRIA Class and thus the CHRIA Class as a whole shares the same interest in obtaining the injunctive relief provided by the settlement. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (“The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.”) (internal quotation marks omitted).

11. Plaintiffs’ claims for monetary damages satisfy Rule 23(b)(3).

12. Plaintiffs’ common contentions predominate over any issues affecting only individual Class Members. *See Times v. Target Corp.*, No. 18 Civ. 02993, 2018 WL 3238821, at *1 (S.D.N.Y. May 14, 2018) (finding allegations that defendants excluded applicants based on criminal history predominated for settlement purposes); *Easterling v. Conn. Dep’t of Corr.*, 278 F.R.D. 41, 48-50 (D. Conn. 2011) (finding predominance satisfied as to whether challenged physical fitness test had disparate impact on female applicants or was justified by business necessity); *Pickett*, 2017 WL 3444755, at *1 (predominance satisfied in FCRA class settlement).

13. Class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually. *See Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3d Cir. 1996).

III. Appointment of Class Representatives

14. The Court preliminarily approves Plaintiffs Frank Long, Joseph Shipley, and Michael White as Representatives of the Class.

IV. Appointment of Class Counsel

15. The Court appoints Outten & Golden LLP, Lawyers' Committee for Civil Rights Under Law, Public Interest Law Center, and Willig, Williams & Davidson as Class Counsel because they meet all of the requirements of Fed. R. Civ. P. 23(g).

16. Class Counsel did substantial work identifying, investigating, prosecuting, and settling the claims; have substantial experience prosecuting and settling employment class actions and civil rights litigation; are well-versed in class action law; and are well-qualified to represent the interests of the Class. *See Mayer v. Driver Sols., Inc.*, No. 10 Civ. 1939, 2012 WL 453234, at *2 (E.D. Pa. Feb. 13, 2012); *Times*, 2018 WL 3238821, at *1; *Keels v. Geo Grp., Inc.*, No. 15 Civ. 6261, 2017 WL 4477000, at *1 (E.D.N.Y. Oct. 1 2017); *Houser v. Pritzker*, 28 F. Supp. 3d 222, 248 (S.D.N.Y. 2014); *see also Woods v. Marler*, No. 17 Civ. 4443, 2018 WL 1439591 (E.D. Pa. Mar. 22, 2018); *Rivera v. Lebanon Sch. Dist.*, No. 11 Civ. 147, 2012 WL 2504926 (M.D. Pa. June 28, 2012); Miazad Decl., Exs. D-F.

17. The work that Class Counsel have performed both in litigating and settling this case demonstrates their commitment to the Class and to representing the Class's interests.

V. Class Notice

18. The Court approves the proposed Notice and Claim Form, attached as Exhibits B and C to the Miazad Decl., and directs their distribution.

19. The content of the Notice fully complies with due process and Rule 23, and adequately puts class members on notice of the proposed settlement. See, e.g., *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 511 (W.D. Pa. 2003) (approving class notice that “advised class members of the time and date of the hearing, apprised them of their opportunity to be heard at that time, informed them generally about the litigation and the proposed Settlement, and invited them to contact [the administrator] with any questions they might have concerning the proposed Settlement”).

VI. Class Action Settlement Procedure

20. The Court hereby approves the following schedule for final resolution of this matter:

- a. Within five (5) days after this Order, Defendant will provide the Settlement Administrator a class list containing the following information for each Class Member: names, last four digits of social security number, last known address, last known telephone number (if known), and last known e-mail address (if known), date of application to SEPTA, and whether such individual is a CHRIA Class Member and/or a FCRA Class Member (“Class List”).
- b. Within fourteen (14) days after receipt of the Class List, the Settlement Administrator shall cause a copy of the Notice and Claim Form to be distributed, by e-mail (where available) and First Class United States Mail to Class Members.
- c. Any Class Member sent a Notice and Claim Form that is not returned as undeliverable shall have sixty (60) days from the date of mailing by the Settlement Administrator to submit a Claim Form. Any Class Member sent a Notice and Claim Form that is not returned as undeliverable shall have forty-five (45) days from the date of mailing by the Settlement Administrator to object or opt out of the Settlement Agreement.
- d. The Settlement Administrator shall send the Reminder via e-mail and First Class United States Mail postcard to each Class Member who has not returned a Claim Form or opted out thirty (30) days after the initial dissemination of the Notice.
- e. Plaintiffs will file a Motion for Final Approval of Settlement no later than fifteen (15) calendar days before the Fairness Hearing.
- f. The Court will hold a final fairness hearing on **Thursday, July 8, 2021 at 11:30a.m.** either at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA 19106 or through video or

phone conference. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

- g. Defendant will fund the settlement within ten (10) days of the Effective Date.
- h. Court-approved Service Awards shall be sent to Plaintiffs no later than four (4) days after Defendant funds the settlement. Court-approved attorneys' fees and costs shall be sent to Plaintiffs' Counsel no later than four (4) days after Defendant funds the settlement.
- i. Within thirty (30) days after the Effective Date, SEPTA will send the Priority Hiring Invitation Letter to Priority Hiring Candidates via email (if available) or U.S. mail (if email is not available). Within thirty (30) days after the Effective Date, SEPTA will retain the Consultant to review SEPTA's criminal history screening policies and practices.
- j. The Settlement Administrator shall cause settlement checks to be mailed to Participating Class Members within thirty (30) days after the Effective Date.
- k. The parties shall abide by all other terms of the Settlement Agreement.

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.